

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HOWARD K. STERN, : No. 07 Civ. 8536 (DC)
Plaintiff, :
: CORRECTED VERSION
- against - :
RITA COSBY and HACHETTE BOOK GROUP :
USA, INC., d/b/a Grand Central Publishing, and :
JOHN or JANE DOE, :
Defendants. :
----- X

**DEFENDANT RITA COSBY'S RULE 56.1 STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED
IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant Rita Cosby ("Cosby"), by her undersigned attorneys, hereby submit this Statement, pursuant to Local Rule 56.1 of the United States District Courts for the Southern and Eastern Districts of New York, in support of their Motion for Summary Judgment. The material facts as to which there is no genuine issue to be tried are as follows:¹

Rita Cosby and Blonde Ambition

1. Cosby has won numerous awards for her journalism over her almost 20 year career. Cosby Decl. ¶ 8.
2. During her career as a reporter, correspondent and host, Cosby has interviewed world leaders including Yasser Arafat, Prime Minister Ariel Sharon, President Clinton, Pakistani President Pervez Musharraf and Yugoslav President Slobodan Milosevic. Cosby Decl. ¶ 4.

¹ References are to (1) the accompanying Declaration of Rita Cosby ("Cosby Decl."), and the exhibits attached thereto; (2) the accompanying Declaration of Bruce Littlefield ("Littlefield Decl.") and the exhibits attached thereto; (3) the accompanying Affidavit of Elizabeth A. McNamara ("McN. Decl."), and the exhibits attached thereto, including deposition transcripts ("__ Dep. at __"); (4) the accompanying Declaration of Virgie Arthur, executed on 12/12/08; (5) the accompanying Declaration of Peter Nygard ("Nygard Decl."); (6) the accompanying Declaration of Wilma Vicedomine ("Vicedomine Decl."), and the exhibit attached thereto.

3. Many of the high-profile stories Cosby covered resulted from cultivating contacts with law enforcement, government, and other sources. Cosby Decl. ¶¶ 1-8.

4. While still at MSNBC, Cosby extensively covered the Anna Nicole Smith story. Cosby Decl. ¶ 9, 15-32.

5. Cosby made the first official statement of Anna Nicole Smith's ("Anna") death. Cosby Decl. ¶ 25.

6. In March 2007 Cosby and author Bruce Littlefield decided to work full time on a book about Anna's death. Cosby Decl. ¶ 9, 37.

7. Cosby agreed to the terms of a deal with Grand Central Publishing, a division of defendant Hachette Book Group USA, Inc. ("Hachette") around April 17, 2007. Cosby Decl. ¶ 39.

8. Cosby and Hachette executed the publishing agreement on May 21, 2007. Cosby Decl. ¶ 41.

9. The manuscript for *Blonde Ambition* (the "Book") was delivered to Hachette in early July 2007. Littlefield Decl. ¶ 32.

10. The Book was published on September 4, 2007. Cosby Decl. ¶ 171.

11. Cosby and Littlefield incorporated previously published information surrounding the events, including Cosby's prior reporting with MSNBC, into the Book. Cosby Decl. ¶ 44.

12. The Book's focus was Anna's untimely death, as its sub-title indicates – "*The Untold Story Behind Anna Nicole Smith's Death.*" Cosby Decl. ¶ 44.

13. The Book's opening and closing chapters provide a detailed explanation of how events unfolded over the days leading up to and the day of Anna's death. Cosby Decl. ¶ 43.

14. To reinforce the theme of the Book of the tragedy that drugs and drug abuse can cause, Cosby donated 10% of her proceeds from the Book to D.A.R.E. (Drug Abuse Resistance Education). The donation was featured on the back cover of the Book. Cosby Decl. ¶ 42.

Anna Nicole Smith

15. At the age of 26, Anna Nicole Smith married 89 year old billionaire Texas oil magnate, J. Howard Marshall III. Cosby Decl. ¶ 10.

16. Anna was called the “most famous gold digger in America” in her obituary in the *Washington Post*, which also described her as a “courtesan.” McN. Decl. ¶ 28.

17. Smith went to drug-rehab in the mid-1990s, and commentators noted that she displayed visibly slurred speech and embarrassing behavior in her public appearances in the following years. Cosby Decl. ¶ 12.

18. Smith starred in her own reality show from 2002-2003 on E! Entertainment, called *The Anna Nicole Show* (the “Show”). Littlefield ¶ 15.

19. The Show and its theme song depicted her life as being “so outrageous.” Littlefield Decl. ¶ 16.

20. The Show was described by CNN as an “obscene train wreck” and by the *Boston Herald* as a “freak show.” Littlefield Decl. ¶ 15.

Howard Stern

21. The plaintiff Howard K. Stern (“Stern”) was among Anna’s lawyers in the litigation that ensued over her claim to her late husband’s estate. McN. Decl. ¶ 29.

22. Stern first became a well-known figure to the public through his regular appearances on the reality series, *The Anna Nicole Show*. Cosby Decl. ¶ 12.

23. In connection with the Show, Stern was described as Anna’s “shifty lawyer and self-proclaimed best friend” by the *Boston Herald*, Oct. 27, 2002, at 005. Littlefield Decl. ¶ 15.

24. The Show evidenced that Anna and Stern lived in a highly sexualized environment. Littlefield Decl. ¶ 22.

25. Stern appears drunk on more than one episode of the Show. Littlefield Decl. ¶¶ 18, 20.

26. Stern discusses such sexually explicit topics as his own masturbation habits on the Show and in a scene included on the Show's DVD, he suggests that someone should perform oral sex on a dog. Littlefield Decl. ¶ 18.

27. Stern repeatedly appears in drag on the Show, including in an episode where he mimics an openly gay man who appeared on the Show. Littlefield Decl. ¶ 20.

Daniel Smith's Death

28. On September 7, 2006, Anna gave birth to her daughter Dannielynn in a hospital in the Bahamas. Cosby Decl. ¶ 16

29. On September 10, 2006, Smith's twenty-year old son, Daniel, died while visiting her in the Bahamian hospital where she was recovering from the delivery of her daughter. Cosby Decl. ¶ 16.

30. Daniel had died of a combination of prescription drugs, with the primary cause being methadone. Cosby Decl. ¶ 18.

31. Daniel did not have a prescription for methadone, and it later came to light that a prescription for methadone had been written for Anna (in a false name) during her eighth month of pregnancy, only weeks before Daniel passed away. Cosby Decl. ¶ 18,

32. Days after Daniel's death, Bahamian Coroner Linda Vergill held a news conference and described her death as "suspicious," but it did not mean there was foul play. Cosby Decl. ¶ 18.

33. It was reported in the press that nurses at the hospital found two pills in the bed Stern had been sleeping in, one of them being methadone. Cosby Decl. ¶ 18.

34. Ford Shelly appeared on television and stated that he saw Stern seemingly flush two pills down the toilet that he found in Daniel's clothing, only to declare "I took care of the problem." *Id.*, ¶ 28.

35. Private detective Jack Harding also appeared on numerous television shows stating that Daniel had met with him in August 2006, about a month before his death. *Id.*

36. Harding stated that Daniel had wanted Harding to investigate Stern because he believed Stern "keeps feeding my mom drugs...he has total control over her....He's a Svengali. Howard does not want me around because I want to get my mom off the drugs and away from him...to save her." McN. Decl. ¶ 35; Cosby Decl. ¶ 28.

37. It was reported in the press that the nannies who had been hired to take care of the newborn Dannielynn described Anna yelling at Stern on more than one occasion after Daniel's death "You did this! You killed him! You caused this!" Cosby Decl. ¶ 28.

38. Virgie Arthur, Anna's mother, went on CNN to warn that her daughter should be "careful about who you hang around with, because you may be next." Cosby Decl. ¶ 23.

Anna and Stern's Actions Following Daniel's Death

39. Less than two weeks after Daniel's death, the last pictures of Daniel were sold to *In Touch Weekly* and *Entertainment Tonight* for a reported \$600,000. Cosby Decl. ¶ 19.

40. Commenting on the sale, one publication noted, "Even before her son Daniel's body was cold, Stern was peddling pictures of Anna and Daniel in her hospital bed, the night before his death." Cosby Decl. ¶ 19.

41. On September 26, 2006, before Daniel's funeral, Stern appeared on *Larry King Live* to announce he was the "proud father" of Dannielynn. Cosby Decl. ¶ 20.

42. On September 28, 2006, still before Daniel's funeral, Stern and Anna participated in a "commitment ceremony" aboard a boat called "Margaritaville." Cosby Decl. ¶ 22.

43. Stern negotiated a deal with Getty Images to sell the photos to *People Magazine* for a reported \$1 Million. Cosby Decl. ¶ 22, Simpson Dep. 71-72.

44. On November 1, 2006, Anna appeared on a "world exclusive" episode of *Entertainment Tonight*. She appeared visibly impaired and slurred her words. Cosby Decl. ¶ 24.

45. On *Entertainment Tonight*, Anna told her mother to "bring it on Mom, Mommie Dearest, Bring it on!" Cosby Decl. ¶ 24.

Anna's Death and the Subsequent Media Frenzy

46. On February 8, 2007, Anna Nicole Smith died at the age of 39 in a Florida hotel. Cosby Decl. ¶ 25.

47. Anna died of a drug overdose, with chloral hydrate the primary cause of death. Cosby Decl. ¶ 28.

48. It was found that eight of the eleven drugs in Anna's possession or system were prescribed in the name of Howard K. Stern, including the chloral hydrate. Cosby Decl. ¶ 28.

49. A report compiled by the Project for Excellence in Journalism (PEJ) titled "Anna Nicole Smith, Anatomy of a Feeding Frenzy" estimated that for the 23 days following Anna Nicole's death, "only two other stories during that time – the debate over Iraq and the 2008 presidential race – generated more attention than Smith's demise – and those only barely." Littlefield Decl. ¶ 49.

50. Shortly after Anna's death, a hearing was convened in Broward County, Florida, to resolve a dispute that arose between Stern and Anna's mother as to where Anna should be buried. Cosby Decl. ¶ 30.

51. During the hearing Judge Seidlin suggested that Stern was an “enabler.” *Id.* ¶ 30(a).

52. Anna’s will was released during the body custody hearings. Cosby Decl. ¶ 30(d).

53. Stern was designated as executor, and her estate was left to her son Daniel. Cosby Decl. ¶¶ 30 and 33.

54. The will expressly disinherited any future children, thereby excluding Dannielynn. Cosby Decl. ¶ 30(d).

55. Judge Seidlin raised doubts as to the validity of the will, stating “no woman in America who read this will [would] sign this will.” Cosby Decl. ¶ 30(d).

56. Larry Birkhead testified at the hearing that Anna was in the hospital during her pregnancy to detox. Cosby Decl. ¶ 30(a).

57. Larry Birkhead testified that while in the hospital Stern gave Anna drugs on “multiple occasions.” *Id.*

58. Virgie Arthur testified at the hearing that Stern kept Anna and Daniel away from her. *Id.*

59. In her testimony, Virgie Arthur reconfirmed her CNN statement that Stern was in some way responsible for Daniel’s death. *Id.*; McNamara Decl. ¶ 19.

60. Stern testified that Anna took methadone but “not over the last five months.” *Id.*

61. Following Anna’s death, Stern received a free flight from *Entertainment Tonight* and allowed them to film him on the plane. McN. Decl. ¶ 19.

62. Stern testified that he did not discuss any remuneration with *Entertainment Tonight* for its use of their taped interview of him. Cosby Decl. ¶ 30(d); McN. Decl. ¶ 19.

63. Stern testified that he did not receive any “third party benefits” from the media following Daniel’s death. *Id.*

64. Stern testified that he did not receive any direct benefits from the media following Daniel’s death, other than the free flight from *Entertainment Tonight*. McN. Decl. ¶ 19; Cosby Decl. ¶ 30(d).

65. During the hearing, an excerpt from a video was put into evidence that was shot by Stern showing an eight month pregnant Anna with her face painted like a clown, and Stern is heard on the video declaring it is “worth money.” Cosby Decl. ¶ 30(a).

66. Stern admits that when the media publicized the video they saw it as evidence that Anna was on drugs late in her pregnancy. McN. Decl. ¶ 8.

Stern Was the Subject of Wide-Spread Criticism and Suspicion

67. By the time *Blonde Ambition* was published, virtually all of the challenged statements concerning Stern had been the subject of widespread prior publication. Cosby Decl. ¶¶ 35, 50, 73, 89, 93, 112, 115, 124, 133, 145, 153, 156, 159; Littlefield Decl. ¶ 51.

68. Stern executed a May 21, 2007 affidavit that was filed in the Bahamas court in connection with the inquest into Daniel’s death. McN. Decl. ¶ 20.

69. Stern’s affidavit included a summary of media reports that he acknowledged was “not comprehensive.” McN. Decl. ¶ 20.

70. The summaries of media reports Stern “bundled” and introduced to the Bahamas court was produced to provide evidence that a potential jury pool for the inquest into Daniel’s death would be “tainted.” *Id.*

71. The summaries of media reports submitted by Stern to the Bahamas court evidenced numerous reports that (1) Stern was paid millions of dollars from the media after Daniel and Anna’s deaths; (2) Stern gave Daniel methadone and flushed the remaining pills

down the toilet; (3) Daniel tried to hire a private investigator to investigate Stern; and (4) Anna said that Stern caused Daniel's death. *Id.*

72. Stern's affidavit filed with the Bahamas court authenticated all the media reports referenced in it and attached to it. *Id.*

Paternity Dispute

73. On October 2, 2006, Birkhead filed a paternity action in California. Cosby Decl. ¶ 21.

74. In Birkhead's paternity action he alleged that Anna was addicted to methadone and Stern was facilitating her habit. *Id.*

75. It was reported that Birkhead's lawsuit contained "damning allegations that Smith was taking methadone and that her attorney and boyfriend Howard K. Stern has been facilitating her habit." Cosby Decl. ¶ 21; McNamara Decl. ¶¶ 13-16.

76. Birkhead accused Anna of "fleeing to the Bahamas to keep her baby from being tested for drugs" and that Stern was claiming to be the baby's father "for his own financial gain." Cosby Decl. ¶ 21.

77. Ben Thompson also filed an affidavit in the paternity action confirming that Birkhead was the baby's father and that Anna had asked Thompson to be listed as the "father" on the birth certificate even though he could not be the father. McN. Decl. ¶¶ 15-16.

78. When the media learned that Stern was negotiating with Birkhead concerning Anna's assets, views concerning the negotiations were expressed, including that it seemed that Stern was "trading bucks for babies" and it appeared to be "kidnapping." Cosby Decl. ¶¶ 33, 145.

79. In April 2007, Birkhead was identified as the biological father of Dannielynn. Cosby Decl. ¶ 34.

The Writing and Editing of *Blonde Ambition*

80. The Book relied on the vast wealth of previously published information surrounding Anna's death, including Cosby's own reporting. Cosby Decl. ¶¶ 44-49.

81. The Book relied on court records, transcripts and other public filings. Cosby Decl. ¶ 44.

82. Cosby conducted scores of interviews in connection with the reporting that went into the Book. Cosby Decl. ¶¶ 45-49.

83. Cosby interviewed Stern's attorneys. Cosby Decl. ¶¶ 49-50.

84. Cosby's research for the Book included interviews of Anna's and Stern's friends, and the attorneys representing all the various interested parties. Cosby Decl. ¶¶ 45, 49, 52.

85. The evidence demonstrates that Cosby was focused on being accurate. Littlefield Decl. ¶¶ 38-41.

86. When Cosby was aware of a source's possible bias, she tried to include information in the Book that would reveal the bias. Littlefield Decl. ¶¶ 42-45.

87. The Book includes Stern's point of view and the responses of his counsel on a number of topics. Littlefield Decl. ¶ 46.

88. The evidence shows that Cosby specifically instructed Littlefield to include positive sentiments about Stern in the Book. Littlefield Decl. ¶¶ 46-47.

89. While providing new insights and details, *Blonde Ambition* largely confirmed and was consistent with the well-publicized events surrounding Anna's last months and her death. (See above, at 67.)

90. At the time the Book was published, Cosby believed the Book was entirely accurate and she had no doubts about any of the information contained in the Book. Cosby Decl. ¶ 44-60.

The Complaint

91. Stern commenced this action on October 2, 2007. Cplt.

92. Stern identified 19 passages from the Book that he alleges are actionable. Cplt.

93. At the time the Book was published, Cosby believed each of the 19 passages to be true and accurate. Cosby Decl. ¶¶ 60, 88, 96, 104, 110, 116, 122, 131, 138, 141, 151, 161, 169.

94. At the time the Book was published, Cosby did not have any doubts about the accuracy of the 19 passages. *Id.*

Statements 1 and 2: Homosexuality

95. Cosby was aware that Jackie Hatten had previously stated on Fox News that Stern as gay. Cosby Decl. ¶ 73.

96. The information Cosby received from Hatten was consistent with much previously published information about Birkhead's sexuality, Alex Denk's information about Birkhead's affair with a male reporter and Anna's sexuality. *Id.*, Cosby Decl. ¶ 149.

97. Cosby was aware that numerous news programs relied on Hatten, who was consistently introduced as Anna's "good friend." Cosby Decl. ¶ 74.

98. Cosby was aware that Hatten contacted the Bahamian Police Commissioner regarding her concerns about Anna. Cosby Decl. ¶ 75.

99. Cosby verified Hatten's credibility with a number of people, including Peter Nygard and Cyrus Nownejad. Cosby Decl. ¶ 77-78.

100. At the time the Book was published, Cosby believed Statement 1 to be true and she did not doubt Hatten's firsthand observations that are described in Statement 1. Cosby Decl. ¶¶ 80, 88.

101. The idea of Stern and Birkhead having a sexual relationship was independently confirmed by Don Clark and Wilma Vicedomine when they described the videotape that the Nannies said Anna watched. Cosby Decl. ¶¶ 81-87.

102. At the time the Book was published, Cosby believed Statement 2 to be true and she did not doubt and had no reason to doubt Don Clark, the ex-FBI Bureau Chief, or his colleague, Ms. Vicedomine. Cosby Decl. ¶ 88.

Statements 3 and 14: Facilitation of Anna's Drug Use

103. Judge Seidlin stated that Stern he was an "enabler." McN. Decl. ¶ 19.

104. Ben Thompson referred to Stern as "the pharmacist." Cosby Decl. ¶ 90.

105. Peter Nygard told Cosby that "friends don't let other friends drive drunk. In Howard's case, he gave her the car keys." Cosby Decl. ¶ 91.

106. Harding appeared on a number of news shows reporting Daniel's concern that Stern was "feeding" his mom "mind numbing drugs" and called him a "Svengali." Cosby Decl. ¶ 93; McN. Decl. ¶ 36.

107. It was widely reported before the Book was published that Stern facilitated Anna's drug use and that he was controlling or a "Svengali." Cosby Decl. ¶ 93.

108. It was previously reported that Anna used cocaine. Cosby Decl. ¶ 91.

109. Cosby had complete confidence in her sources for the information contained in Statements 3 and 14. Cosby Decl. ¶¶ 93-95.

110. The information contained in Statements 3 and 14 was consistent with everything else Cosby knew about Anna and Stern and believed. Cosby Decl. ¶¶ 90-92.

111. Cosby believed Statements 3 and 14 to be true and accurate at the time the Book was published and she did not doubt the accuracy of the information. Cosby Decl. ¶ 96.

Statements 4 and 5: Mark Hatten Allegations

112. Mark Hatten's conviction and his contention that he had been "set up" by Anna and Howard were a matter of public record. Cosby Decl. ¶ 98.

113. Cosby corroborated Hatten's information with his lawyer and court records. Cosby Decl. ¶¶ 98-102.

114. Stern admits in his Complaint that Hatten did allege that he had been asked to participate in a conspiracy to arrange a "hit" on Pierce Marshall, the FBI investigated the allegation and the investigation never went further. *See*, Cplt. ¶ 98.

115. The Book's report is not substantively different. Cosby Decl. ¶ 99.

116. It was previously published that a "hit" has been put out on Pierce Marshall. Cosby Decl. ¶ 100.

117. Cosby corroborated much of the information contained in Statements 4 and 5. Cosby Decl. ¶¶ 98-102.

118. Cosby believed the information contained in Statements 4 and 5 was true and accurate at the time the Book was published and she did not doubt the accuracy of the information. Cosby Decl. ¶ 104.

Statements 6 and 11: Perjury

119. Stern does not dispute that days after Anna's death, he accepted a free flight to the Bahamas and allowed *Entertainment Tonight* to film him on the plane crying in his grief, as well as when he was re-united with Dannielynn. McN. Decl. ¶ 8 (Stern Dep. at 345:19-346:12; 349:13-350:2)

120. It was reported that Stern was paid at least \$1 million for the interview. Cosby Decl. ¶ 106.

121. Stern admits that he executed a license agreement with ET on February 10, 2007 giving them “exclusive rights to use certain photographs and video footage.” McN. Decl. ¶ 8 (Stern Dep. at 343:19-344:11) and ¶ 24.

122. On February 14, 2007, *Entertainment Tonight* wired \$150,000 into Stern’s bank account. Cosby Decl. ¶ 109.

123. At the end of the year, ET issued a 1099 in Stern’s name. *Id.*

124. Pol Atteu, one of Anna and Howard’s friends, testified that he had personal knowledge that Stern had negotiated the deal with ET for one million dollars. McN. Decl. ¶ 5 (Atteu Dep., 130:15-132:4).

125. Following Daniel’s death, Stern negotiated and Anna entered into a series of media deals with Getty Images and *Entertainment Tonight* that totaled approximately \$1.2 million. McN. Decl. ¶ 8 (Stern Dep. at 240:17-243:2; 249:25-256:14; 278:21-280:19; 301:4-302:17; 316:11-320:17).

126. Patrik Simpson, another friend of Anna and Howard, testified that Stern sold photos that Patrik had taken of the commitment ceremony to *People* for one million dollars. McN. Decl. ¶ 4 (Simpson Depo., 71:4-72:20).

127. If the Book can be read to say that Stern perjured himself concerning monies or negotiations with the media, it is true. Cosby Decl. ¶ 110.

128. Cosby believed Statement 6 to be true and accurate at the time she published the Book and did not doubt the accuracy of the Statement. Cosby Decl. ¶ 110.

129. Anna and Howard refused to resolve the paternity issue through DNA testing. McN. Decl. ¶ 31.

130. After Anna's death, Ford Shelley testified at the body custody hearing that Anna's flight to South Carolina in May and subsequent move to the Bahamas was an attempt to move to a place where Birkhead would have a difficult time challenging paternity. Cosby Decl. ¶ 112; McN. Decl. ¶ 20.

131. Shelley testified that he put Stern in touch with a South Carolina attorney to see if that state was a favorable forum and when he learned it was not, Ford put them in touch with Bahamian counsel and they subsequently made the move to the Bahamas. Cosby Decl. ¶ 112; McN. Decl. ¶ 20.

132. Birkhead claimed in his paternity suit, and Ben Thompson confirmed, that Anna asked Thompson to allow his name to be listed as the "father" on Dannielynn's birth certificate. McN. Decl. ¶ 13.

133. TMZ published an affidavit filed in Birkhead's paternity suit by Laurie Payne, a friend of Anna and Thompson's. Cosby Decl. ¶ 112.

134. Payne attested that Anna had not only told her that the only possible fathers were Ben Thompson (who was incapable) and Larry Birkhead. McNamara Decl. ¶ 14.

135. Payne also attested that Anna would never have had sex with Stern. McN. Decl. ¶ 14.

136. It was noted in the press that if Stern was *not* the baby's biological father, his designation as executor under the will was in danger. McN. Decl. ¶ 31.

137. Birkhead testified that Anna acknowledged his paternity with Stern present in the hospital. McN. Decl. ¶ 3 (Birkhead Dep. 90:21-92:5).

138. Immediately after the baby's birth, Stern identified himself to the Bahamian police as only Anna's "best friend" and not the baby's father (McN. Decl. ¶ 18).

139. Cosby believed Statement 11 to be true and accurate at the time the Book was published and she had no doubts about its accuracy. Cosby Decl. ¶ 116.

Statements 7 and 8: Pimping

140. The paragraph in the Book describing Daniel's contention that Stern was "pimping" Anna was consistent with Anna's "gold digger" reputation. Cosby Decl. ¶ 118.

141. Anna supported Stern and by his own admission he lived entirely off money Anna earned. Cosby Decl. ¶ 30(d); McN. Decl. ¶ 8.

142. Anna gained favors, houses and other things from various wealthy men that she was associated with. Cosby Decl. ¶ 119.

143. Cosby obtained the information in Statements 7 and 8 from Jackie Hatten, whom she believed and found to be credible and Jack Harding whom she also believed and found to be credible. Cosby Decl. ¶¶ 74-80, 93.

144. Other news organizations have relied on Hatten and Harding. Cosby Decl. ¶¶ 74, 93.

145. Hatten and Harding's information independently corroborated each other. Cosby Decl. ¶ 121.

146. Stern was previously described in the press as a "pimp." Cosby Decl. ¶¶ 119-120.

147. The information contained in Statements 7 and 8 was consistent with all the information Cosby had and believed. Cosby Decl. ¶ 122.

148. At the time the Book was published, Cosby believed Statements 7 and 8 to be true and accurate and she had no doubts about the accuracy of the Statements. Cosby Decl. ¶ 122.

Statement 9: Obstruction of Justice and destruction of Evidence

149. Ford Shelley's description of Stern taking two pills found in Daniel's clothing into a bathroom and flushing the toilet was reported by a number of news organizations and Shelley reported the information to the Bahamian police. Cosby Decl. ¶¶ 124-125.

150. Cosby confirmed this information with Ford Shelley directly. Cosby Decl. ¶ 126.

151. Cosby also obtained the reported information concerning the Bahamian coroner from Ford Shelley, and corroborated it with Ben Thompson. Cosby Decl. ¶¶ 127-138.

152. Stern does not dispute that he wanted Virgill off the case after she called Daniel's death "suspicious." McN. Decl. ¶ 8.

153. The information contained in Statement 9 was consistent with everything Cosby knew to be true and believed. Cosby Decl. ¶¶ 124-130.

154. At the time the Book was published, Cosby believed Statement 9 to be true and accurate and she had no doubts about the accuracy of the information. Cosby Decl. ¶ 131.

Statement 10: Theft, Money Laundering and Wire Fraud

155. Birkhead told Cosby that he believed Stern was stealing money from Anna. Cosby Decl. ¶ 136.

156. It was previously reported that in January Birkhead had gone to the Bahamian police to file charges against Stern. Cosby Decl. ¶ 133.

157. Cosby sought confirmation from the Bahamian police and received a confidential fax verifying that Birkhead spoke with the police and had made charges that Stern engaged in "money laundering, tax evasion and other offenses." Cosby Decl. ¶ 136.

158. Cosby obtained information contained in Statement 10 from Mark Speer. Cosby Decl. ¶ 134.

159. Cosby researched Speer's background, came to trust him as a reliable source and had complete confidence in information received from him. Cosby Decl. ¶¶ 137-140.

160. Cosby obtained information concerning the \$37,000 wire transfer contained in Statement 10 from investigators Don Clark and Wilma Vicedomine. Cosby Decl. ¶ 139.

161. Cosby had complete confidence in information from Clark and Vicedomine and had independently corroborated other information she received from them. Cosby Decl. ¶¶ 82-83, 140.

162. At the time the Book was published Cosby believed Statement 10 to be true and accurate and she had no doubts about the accuracy of the information. Cosby Decl. ¶ 141.

Statements 12 and 13: Kidnapping and Extortion

163. It was widely reported that Stern and Birkhead were negotiating to resolve the dispute concerning Dannielynn's paternity. Cosby Decl. ¶ 144.

164. The press reaction to the negotiations included observations that "to me, this is kidnapping," or, "child stealing" and other similar comments. Cosby Decl. ¶ 145.

165. Cosby relied on information concerning the negotiations that she received from Larry Birkhead, Ford Shelley and Mark Speer and had no reason to doubt the information which was all consistent. Cosby Decl. ¶¶ 146-147

166. Cosby relied on Virgie Arthur for the description of her conversation with Birkhead that is contained in Statement 13. Cosby Decl. ¶ 148.

167. Cosby believed Arthur's statement and had no reason to doubt the information. Cosby Decl. ¶ 149.

168. The information Cosby obtained for Arthur was consistent with other information that she had and believed to be true. Cosby Decl. ¶¶ 148-150.

169. At the time the Book was published, Cosby believed Statements 12 and 13 were true and accurate and did not doubt the accuracy of the information. Cosby Decl. ¶ 151.

Statements 15-19: Involvement in the Deaths of Anna Nicole Smith and Daniel Smith

170. The information contained in Statements 15-17 was all previously and widely reported. Cosby Decl. ¶¶ 153-156.

171. The information contained in Statement 17 was obtained in part from the Florida hearing and Cosby's observations and experience at the Florida hearing. Cosby Decl. ¶¶ 156-157.

172. The information contained in Statement 18 was all previously and widely reported. Cosby Decl. ¶¶ 163-168.

173. The information contained in Statement 18 was consistent with facts known to Cosby and other reported information. Cosby Decl. ¶¶ 163-167.

174. The information contained in Statement 19 was either all previously reported or based on numerous sources, public documents, phone records and testimony. Cosby Decl. ¶¶ 158-160.

175. Plaintiff does not allege that any information in Statement 19 is false. Cplt. ¶ 365.

176. The Book does not state or imply that Stern was criminally responsible for the death of Anna Nicole Smith. Cosby Decl., Ex. 1.

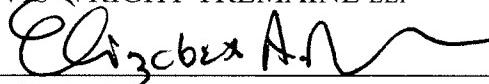
177. The Book does not state or imply that Stern was criminally responsible for the death of Daniel Smith. Cosby Decl., Ex. 1.

178. At the time the Book was published, Cosby believed the information contained in Statements 15-19 was all true and accurate and she had no doubts about the accuracy of this information. Cosby Decl. ¶¶ 161, 169.

Dated: December 15, 2008
New York, New York

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